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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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STEPHANIE FRAKER,  
*Complainant,*

v.

METROPOLITAN SCHOOL DISTRICT OF  
MARTINSVILLE,  
*Respondent.*

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Formal Complaint No.  
17-FC-181

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Metropolitan School District of Martinsville (“School”) violated the Access to Public Records Act (“APRA”). Ind. Code §§ 5-14-3-1-10. The School has responded via Ms. Susan Traynor Chastain, Attorney. Her response is enclosed for review. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 25, 2017.

## **BACKGROUND**

The Complainant, Ms. Fraker, contends the Metropolitan School District of Martinsville violated the Access to Public Records Act by not providing a response to an access request for public documents.

During a Board of School Trustees meeting on July 20, 2017, the Complainant requested clarification and a factual basis on the discipline of an administrator. On July 21, the Board posted a “response” on social meeting addressing various concerns. It does not appear to directly address the administrator in question. Other than this response, Complainant had not received a factual basis at the time of her filing of the formal complaint.

The School responded to the Complaint on August 9. In its response, the School argues the administrator was placed on paid administrative leave. This leave was not the final action taken which would therefore necessitate a factual basis under the Access to Public Records Act. Rather the administrative leave is the employee’s status of formal charges as opposed to the final determinative act. The School also argues the request itself was deficient as it was not made in school offices or during normal business hours.

## **ANALYSIS**

APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. The Metropolitan School District of

Martinsville is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). Therefore, any person has the right to inspect and copy the School's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a). A public agency is required to make a response to an oral request that has been mailed within twenty-four (24) days after it is received. Ind. Code § 5-14-3-9(c).

The School does not dispute the fact a request was made orally by the Complainant during the public comment forum of the Board meeting. It claims the administrative leave imposed upon the administrator was merely the initiation of an investigation and does warrant a factual basis.

Ind. Code §§ 5-14-3-4(b)(8)(B) & (C) state information relating to the status of any formal charges against the employee; and the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged must be disclosed upon request.

Placing an administrator on paid leave, while a substantive decision, is not a final action as contemplated by the APRA. The leave is the status of formal charges. It appears as if any allegations had not been substantiated nor were any final determinations made. Once a decision to suspend, demote or terminate is made, a factual basis then becomes subject to disclosure, but not before.

As for the deficiency of the request itself, I do take exception to the School's analysis although it is not fatal to their overall argument. The oral request appears to have been a valid request for a factual basis under the APRA.

The School contends the Board meeting is not an office of the agency, however, it is the location where government functions are carried out by the Board. A public records request does not have to be made in a traditional office. A Boardroom is a sufficient location to submit a request. The School also argues it was made outside normal business hours and not in the agency's office. The School Board was conducting business as the governing body of the School during the meeting. It is clearly during its business hours. The APRA does not necessarily designate business hours as 9-5.

As for its response, oral requests may be denied orally pursuant to Ind. Code § 5-14-3-9(d). As the reason for the denial was the non-existence of the record, the denial was sufficient.

### **CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor the Metropolitan School District of Martinsville has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt  
Public Access Counselor